



November 6, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-5115

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154447.

The Texas Department of Public Safety (the “department”) received a written request for “all forensic and/or ballistics reports from the Texas Department of Public Safety Crime Lab in Lubbock relating to the Lubbock Police Department SWAT incident on July 13th.” You contend that “[a]lthough the [department’s] Crime Lab has prepared, and maintains, the documents responsive to this request, the Department believes the reports are, in fact, the property of the Lubbock Police Department and any request for their release should be directed to that entity.” In the alternative, you contend the requested information is excepted from disclosure under section 552.108 of the Government Code.

Section 552.002(a) of the Government Code defines the meaning of “public information” as follows:

In this chapter, “public information” means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Consequently, it is immaterial for purposes of this ruling that the documents at issue may be the “property” of another governmental body. Because the records at issue clearly have been “collected, assembled, or maintained” by the department “in connection with the transaction

of official business," the records are "public information" that may be withheld from the public only to the extent that they come within an exception to disclosure. See Open Records Decision No. 549 (1990) (finding that holding in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), makes clear that virtually all information in physical possession of governmental body is "public information" subject to chapter 552 of Government Code). Consequently, we will consider the applicability of the exception you raised.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because the release of such information presumptively would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). You state that the records at issue relate to a pending criminal investigation being conducted by the Lubbock Police Department and that "the information gathered in that investigation may be presented to a grand jury for consideration of criminal charges." Based on these representations, we conclude that the department may withhold the requested records pursuant to section 552.108(a)(1) of the Government Code. See Open Records Decision Nos. 474 (1987), 372 (1983) ("law-enforcement exception" may be invoked by any proper custodian of information that relates to criminal incident).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/RWP/sdk

Ref: ID# 154447

Enc. Submitted documents

c: Mr. Jeff Klotzman
KJTV Fox 34
9800 University Avenue
Lubbock, Texas 79423
(w/o enclosures)